

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

SEP 20 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MICHELL R. EUPERS
CLERK

IN THE MATTER OF THE SEARCH OF
INFORMATION ASSOCIATED WITH:
xzaviermarshall@usa.com
THAT IS STORED AT PREMISES
CONTROLLED BY 1&1 MAIL & MEDIA.
INC.

Case No.

19 Mr 1167

Filed Under Seal

**APPLICATION FOR ORDER COMMANDING 1&1 MAIL & MEDIA, INC NOT TO
NOTIFY ANY PERSON OF THE EXISTENCE OF WARRANT**

The United States requests that the Court order 1&1 Mail & Media Inc not to notify any person (including the subscribers and customers of the account(s) listed in the warrant) of the existence of the attached warrant for one year.

1&1 Mail & Media Inc is a provider of an electronic communication service, as defined in 18 U.S.C. § 2510(15), and/or a remote computer service, as defined in 18 U.S.C. § 2711(2). Pursuant to 18 U.S.C. § 2703, the United States obtained the attached warrant, which requires 1&1 Mail & Media Inc to disclose certain records and information to the United States. This Court has authority under 18 U.S.C. § 2705(b) to issue "an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order." *Id.*

In this case, such an order would be appropriate because the attached warrant relates to an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation, and its disclosure may alert the targets to the ongoing investigation. Accordingly, there is reason to believe that notification of the existence of the attached warrant will seriously

jeopardize the investigation or unduly delay a trial, including by giving targets an opportunity to flee or continue flight from prosecution, destroy or tamper with evidence, or change patterns of behavior. *See* 18 U.S.C. § 2705(b). Some of the evidence in this investigation is stored electronically. If alerted to the existence of the warrant/subpoena/court order, the subjects under investigation could destroy that evidence, including information saved to their personal computers.

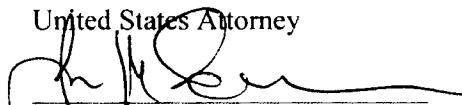
The United States requests the Order be in effect for one year after its signing. This proposed length of time is reasonably related to the nature of the investigation that is being undertaken. The United States seeks to obtain, through the warrant to which this requested Order relates and through continued investigation involving the use of other investigative techniques, not only the evidence specified in the attachment to the warrant, but also to identify all persons participating in the scheme, and to determine whether such persons have victimized others in addition to the known victims. The United States expects that this investigation might reasonably take a year or longer, but plans to return to this Court for any non-disclosure authorization needed beyond the currently-requested one year.

WHEREFORE, the United States respectfully requests that the Court grant the attached Order directing 1&1 Mail & Media Inc not to disclose the existence or content of the attached warrant, for a period of one year from the date of entry of the proposed Order or until further Order of the Court, except that 1&1 Mail & Media Inc may disclose the attached warrant to an attorney for 1&1 Mail & Media Inc for the purpose of receiving legal advice.

The United States further requests that the Court order that this application and any resulting order be sealed until further order of the Court. As explained above, these documents discuss an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may seriously jeopardize that investigation.

Executed on Sept. 17, 2019.

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